United Nations A/55/335

General Assembly

Distr.: General
28 August 2000
English
Original: French

Fifty-fifth session
Item 116 (c) of the provisional agenda*
Human rights questions: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in Haiti

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report, accompanied by recommendations, on the situation of human rights in Haiti, prepared by Mr. Adama Dieng, independent expert, in accordance with Economic and Social Council decision 2000/277 dated 28 July 2000.

* A/55/150 and Corr.1-3.
** In accordance with General Assembly resolution 54/248, sect. C, para. 1, this report is being submitted on 28 August 2000 so as to include as much updated information as possible.

00-62584 (E) 121000 121000

Report of the independent expert of the Commission on Human Rights on the situation of human rights in Haiti

Contents

		Paragraphs	Page
I.	Introduction	1–8	3
II.	Social and political context	9–17	4
III.	The National Police and politicization	18–28	5
IV.	Constitutional problems or lack of a culture of democracy	29–35	7
V.	The judicial system and impunity	36–40	9
	Judicial reform: speeding up the process	41–45	9
VII.	The documents of the military and paramilitary forces	46–48	10
VIII.	Dysfunction of the criminal justice system	49–61	11
IX.	Rural populations and the right to development	62–78	13
X.	Towards a new generation of magistrates	79–81	15
XI.	Administration of justice	82–87	15
XII.	Establishment of the International Civilian Support Mission in Haiti (MICAH)	88–92	16
XIII.	Right to education	93–99	17
XIV.	Haitian migrants in the Dominican Republic	100–102	18
XV.	The murder of Jean Dominique	103–106	19
XVI.	Conclusion	107–108	19

I. Introduction

1. At its fifty-sixth session, the Commission on Human Rights, through its resolution 2000/78, endorsed by Economic and Social decision 2000/277, invited the independent expert to report to the General Assembly at its fifty-fifth session and to the Commission at its fifty-seventh session on developments in the human rights situation in Haiti. In implementation of that resolution, the independent expert carried out a mission to Haiti from 27 July to 8 August 2000.

2. During his visit to Haiti, he met with a large number of politicians and members of civil society. The many public figures with whom he met included René Préval, President of the Republic; Jacques Edouard Alexis, Prime Minister; Jean-Bertrand Aristide, former President of the Republic and leader of the Mouvement Fanmi Lavalas; Mirlande Manigat, Senate candidate and party representative; Fritz Longchamp, Minister for Foreign Affairs; Camille Leblanc, Minister of Justice; Gérard Pierre Charles, leader of the Organisation du peuple en lutte (OPL); Paul Antoine Bien-Aimé, Minister of National Education; Evans Paul, President of the Espace de concertation; Mouvement catholique pour une nouvelle Haiti (MOCHRENA) leaders; Hubert De Roncay, leader of the Mouvement patriotique pour le sauvetage national (MPSN); Renaud Bernardin of the Parti Louvri Baryè (PLB); members of the Provisional Electoral Council and members of the judiciary. The independent expert wishes to express his gratitude for their constructive cooperation.

3. He also had highly productive meetings with Alfredo Lopes Cabral, the Representative of the Secretary-General; the Chargé d'affaires of the Embassy of Venezuela; the Deputy Resident Representative of the United Nations Development Programme (UNDP); the representative of the United Nations Food and Agriculture Organization (FAO) and acting resident coordinator; and representatives of various civil society associations, including the Syndicat d'enseignants; non-governmental human rights organizations; and women's organizations. The expert held working meetings with several International Civilian Support Mission in Haiti (MICAH) staff members and interviewed Haitian men and women of various social classes.

4. In this report, the independent expert is endeavouring to present a detailed analysis of the human rights situation in Haiti and to make a number of recommendations; the implementation of some of them will require the combined efforts of the Haitian authorities and the international community. It should be explained that the independent expert's mission took place at a time of tension between Haiti and the international community as a result of the manner in which the elections of 21 May 2000 were conducted and, more specifically, of the method of calculation used in the senatorial election.

5. On the day before the independent expert's arrival in Port-au-Prince, a grenade had exploded at the residence of the Canadian Ambassador to Haiti; however, there were no victims. The Canadian diplomat and his wife were absent when the grenade was thrown by unknown assailants. That same day (Thursday, 27 July 2000), the police had found a similar grenade in front of the former office of the International Civilian Mission in Haiti (MICIVIH). This tension appeared to be exacerbated by the threat of sanctions, including an embargo against Haiti. According to newspaper articles, President Préval had warned that Haitians would have to tighten their belts if the international community imposed sanctions on Haiti. This assertion reportedly spurred discussion on the radio, in the press and even in the street.

6. It is true that certain statements made by foreign diplomats were an affront to the self-respect and patriotism of some Haitian men and women. For those familiar with Haitian history, it is hardly surprising that the affair of the so-called embargo split the country into two camps. This climate, which also involved often-bitter exchanges between some of the opposition parties and Fanmi Lavalas, should be relaxed in the interests of the Haitian people.

7. Daily violence, including holdups, murders, fatal woundings and burglaries, form a background for this verbal political violence. This dark picture is worsened by the abject poverty of the poorest classes, who have suffered so much and who continue to face problems of access to drinking water, health care, housing, education and, last but not least, the justice system, the law — in short, legal services. These people should be the first concern of all parties involved including the international community.

8. This report, which the independent expert hereby submits to the General Assembly, examines the social and political context, the judicial system, the Haitian National Police, international cooperation, the right to education, the right to development in rural areas, women's rights and the prison issue; lastly, it pays tribute to the journalist and human rights advocate, Jean Dominique.

II. Social and political context

9. Since President Préval dissolved Parliament on 11 January 1999, he has governed virtually by decree. It is true that efforts have been made to hold elections by setting up a Provisional Electoral Council (CEP). This nine-member body was instructed to organize elections to fill the seats in the Senate, the Chamber of Deputies, the governing boards of the *sections communales*, the municipal councils, the assemblies of the *sections communales*, the municipal and departmental assemblies, the departmental councils and the interdepartmental council. Has the CEP been able to maintain painstakingly its credibility, objectivity and impartiality so that elections can be held in accordance with the principles of democratic pluralism?

10. To judge by the controversy that followed the 21 May 2000 elections, nothing is less certain. However, that conclusion should be nuanced. According to the statements and reports of various observers, the elections were held under optimal conditions of transparency and freedom with a rather high rate of participation in comparison with other elections held since 1990. There were virtually no cases of police misconduct; no police officer was accused of preventing citizens from fulfilling their electoral duty. Some even claimed that the police had compensated for the failings of the CEP since, in some areas without electricity, the votes were tallied on police premises without any interference.

11. It is true that this situation led to complaints that the police had been politicized and even to accusations of illegal police interference. In the expert's opinion, the conclusion reached by many observers was somewhat hasty. On the evening of 21 May, none of the observer missions had occasion to report the occurrence of large-scale fraud of such a nature as to affect the validity of the elections. Later, the opposition accused the Lavalas Government of using armed commando units and the National Police to violate the right of citizens to vote. They reported that ballot boxes had been stolen or replaced by other, previously-filled ones; that people had been intimidated with weapons but there had been no bloodshed; that votes had been counted without proxy supervision; that false documentation had been submitted; that ballots had been cancelled; and that candidates had been terrorized or detained.

12. This situation leads the expert to point out that election monitoring is not limited to election day; it must at least cover the period from the electoral campaign to the announcement of the provisional results. In any case, Ambassador Orlando Marville, head of the Organization of American States (OAS) technical mission, ultimately challenged the method of calculating senatorial seats used by the CEP. Since then, the controversy has focused on this arithmetical issue, which is of major importance in meeting the requirements of universal suffrage. The CEP nevertheless decided that its interpretation should prevail, supporting its position by referring to the method of calculating percentages used and accepted in the 1990, 1995 and 1997 elections.

13. It therefore proclaimed the final results, which gave the majority of seats to the Fanmi Lavalas party. The opposition unanimously rejected these results and the OAS Electoral Observation Mission continued to maintain that the method of calculation used by the CEP for the senatorial elections was not in accordance with the Electoral Law. While acknowledging that the OAS position is well-founded, the expert recognizes the difficulty faced by CEP members in calculating the majority in the case of an election to fill one seat in a department where two or even three senatorial seats were to be filled.

14. They took the view that this method of calculation, which would invalidate the first-round election of a candidate for whom the entire electorate had voted, would reveal a certain weakness in the Electoral Law in cases where there was more than one vacant seat per department to be filled. In order to reduce to a minimum the bias resulting from ballot box stuffing, they decided, in the case of elections to two seats in one department, to calculate the total number of votes obtained by the four candidates with the largest number of votes, divide the total by two and determine whether any of the candidates had enough votes to constitute a majority on the basis of this calculation. Citing the 1990 and 1995 elections (in

which none of the candidates had objected to the use of that method) as a precedent, the CEP decided that the "50 per cent plus one" rule for a first-round victory, established in the Electoral Law as applicable to the election of deputies, did not apply where there was more than one senatorial seat to be filled in a department.

15. The expert considers that the CEP did not fully apply articles 53 and 64 of the Electoral Law of 19 July 1999. The CEP "decision" was based more on equity than on law. Furthermore, it is clear from the CEP explanatory statement dated 30 June 2000 that "the CEP, as the sole authority vested with the power to apply the Electoral Law, made a good-faith effort to find a method corresponding as closely as possible to the spirit of the law". An appeals body, had one existed, would probably have reversed the CEP "decision" on the grounds that it was in violation of the Law. Nevertheless, it is unfortunate that the OAS position was announced publicly even before the CEP received the letter sent to it by Mr. Marville, the OAS mission head in Haiti.

16. Fortunately, by its resolution dated 4 August 2000, the Permanent Council of OAS decided to accept the invitation of the Haitian Government and to send to Haiti a mission led by the Secretary-General of OAS, on which the Group of Friends of the United Nations Secretary-General would be represented, to identify, together with the Haitian Government and other sectors of the political community and civil society, options and recommendations for resolving, as expeditiously as possible, difficulties such as those that had arisen from differing interpretations of the Election Law, and for further strengthening democracy in Haiti.

17. It is to be hoped that all parties concerned will support the success of this OAS mission. However, the most important thing is for all of them to realize that what unites them is far more important than what separates them. In that regard, the expert cannot but associate himself with the statement made by Micha Gaillard, an Espace de concertation candidate:

> It is the capacity of the members of our political, economic, social and moral elite to transcend their own interests that will allow us to achieve together for Haiti what each of us seems individually to desire: a chance to hope and struggle for a country worth living in. In order to achieve that goal, we must change our exclusionary, combative values, attitudes and behaviour into values, attitudes and behaviour characterized by inclusion, solidarity, tolerance and understanding between groups and individuals.

This raises the whole issue of a culture of democracy, the lack of which must be remedied in Haiti in order to restore to its people their full dignity.

III. The National Police and politicization

18. In November 1999, we appealed for moderation on the part of all political actors. We also expressed the hope that all actors would help to create the conditions that would allow the electoral process to continue normally towards free, democratic and transparent elections with the broadest possible participation by the Haitian people. Our appeal was not in vain, as several parties agreed to sign a code of ethics drawn up by the Provisional Electoral Council (CEP) on 4 January 2000, which requested the parties and candidates to refrain from spreading views or encouraging actions that might endanger sovereignty, public order, integrity or security in the country. In the light of the testimony gathered during his visit, the expert is in a position to state that the principles set forth in the code have not been scrupulously observed. The litany of alleged violations of the code, in particular, and of other laws and regulations in general, would take some time to recite.

19. It will be sufficient to report on the fire set on the premises of the Espace de concertation, whose perpetrators appear to be shielded from any prosecution. Another flagrant case took place two days after the election, on 23 May 2000, when Paul Denis, a Senate candidate for the department of the South, and four other OPL members, were arrested at his home in the town of Cayes by members of the Rapid Intervention and Law Enforcement Unit of the National Police (GIPN). These arrests, which were not the result of a crime, were made without a warrant.

20. From the town of Cayes they were taken to Port-au-Prince to be held at the police station at Pétion-Ville, without being brought before a judge. The next day, their attorneys, from the Malary firm, submitted a request to the justice of the peace of Pétion-Ville to visit the Police Station at Pétion-Ville in order to verify

that they were being held at that location, receive the detention order from the officers in charge at the station, and gather any information on the reasons for their detention and the place and date of their arrest. In response to this request, the justice of the peace made a report which revealed that he had not been able to see the detention list, that members of the Intervention Unit arranged to have a warrant issued by the government commissioner of Cayes after they had made the arrests, and that the warrant, which had been given to Paul Denis, had been confiscated from him at the Petion-Ville jail.

21. The warrant stated in substance that the Haitian National Police was authorized to search in any houses where they suspected that illegal weapons were being stockpiled, to arrest violators and to bring them to a secure location, given the dilapidated conditions at the Civil Prison, in order to ensure a peaceful atmosphere in the department of the South. The only weapon found at the home of Paul Denis is a pistol for which he has the proper permit. However, this permit was confiscated by the police. The attorneys requested from the presiding judge of the Court of First Instance in Port-au-Prince authorization to meet with the government commissioner of Port-au-Prince on a specific date in order to have the arrest and detention of Paul Denis and his companions declared illegal and arbitrary and have their immediate release ordered.

22. The order drawn up and issued by the presiding judge of the Tribunal indicates that no file, complaint, report or warrant exists in writing from an official with jurisdiction and that they had been detained beyond the 48-hour time limit without being brought before a judge. For those reasons, the presiding judge of the Tribunal ruled that the detention of Paul Denis and the others was illegal and ordered their immediate release. They will be released after being returned to Cayes. Curiously, the government commissioner of Cayes then requested their release from the National Police officer in charge, on the condition that they would answer any summons from the courts.

23. Another example that reinforces the tendency towards politicization of the police is the case of the incidents which occurred at Maïssade on 11 and 12 July 2000, and which allegedly included illegal arrest and detention, maltreatment and destruction of property. These events were the subject of an investigation conducted by advisers to MICAH (Human Rights section). Their investigation showed that the Maïssade incidents were the work of members of the Espace de concertation and members of Fanmi Lavalas. They also injured persons and damaged houses. The investigators noted that searches and arrests made on the basis of information provided by members of Fanmi Lavalas were directed only at members of the Espace de concertation. No homes of members of Fanmi Lavalas were searched. The police did not even question, much less arrest, the individuals implicated in the attacks carried out on the afternoon of 12 July. Furthermore, despite the insistence by the police that the justice of the peace had been present during the searches, the justice of the peace himself stressed that he was present only during four searches and one arrest.

24. Only five members of the Espace de concertation had been arrested in a very forceful manner, although they were not subjected to ill-treatment after their arrest. Two days later, they were placed under a committal order, and 10 days later, one of them was granted provisional release. As one may imagine, no representative of the parties involved in the dispute has accepted any responsibility at all for the incidents, each claiming that the other was responsible. However, it is appropriate to note that the allegations made by the Espace de concertation were exaggerated, particularly the accusation of kidnapping.

25. An issue involving freedom of association and expression is the refusal by the police to authorize a demonstration at Lascahobas planned for 6 July 2000, on the initiative of the opposition, which intended to denounce the allegations of fraud during the elections. What remains puzzling is that the police and the government commissioner gave different versions of the decision to prohibit the demonstration. The former maintains that the three-day notice required under the law had not been observed by the representatives of the opposition, while the latter cited security reasons. These circumstances make it appear that only Lavalas supporters are authorized to express their opinions and hold demonstrations. It is regrettable that no official inquiry has been conducted to date. The same is true for the complaint of death threats made by the leader of the Espace de concertation against a member of Fanmi Lavalas, supported by a video cassette. Curiously, the government commissioner at Port-au-Prince, when questioned by the expert, stated that he had not received such a complaint. The expert not only

condemns these violations of the law, but vigorously denounces the impunity which seems to apply to them.

26. The day after his meeting with the President of the Senate of the Republic, the expert received from him a press release reporting the intrusion of heavily-armed men into the Senate chamber. He confirmed that it was a group of candidates from the Parti Fanmi Lavalas for the last legislative elections who had entered the building accompanied by a group of heavily-armed civilians. It would appear that members of the Rapid Intervention and Law Enforcement Unit (CIMO) of the National Police had been in the neighbourhood. Even though it may well have been a visit to become familiar with the premises (they were accompanied by a sitting Senator), the expert is of the view that a deployment of that size cannot be justified. It can only serve to exacerbate the tension prevailing in the country.

27. Another matter of concern to the expert is allegations of torture directed against officers of the Haitian National Police. Acts of violence were committed against Marie Carmen Moïse, who was beaten and severely burned on the arms and other parts of the body with an electric iron. Her attackers were allegedly police officers, who demanded $200,000 and cocaine. Mrs. Carmen Moïse is a journalist and editor of a magazine in Miami. A complaint was lodged, and the expert invites the judicial authorities to make every effort to shed light on this matter and punish the perpetrators.

28. The independent expert strongly hopes that the activities of several non-governmental human rights organizations in monitoring the holding of the elections, as well as their very laudable activities in the area of civic education, will help to increase the transparency and freedom of future elections. Therefore, he appeals to the international community to support capacity-building in civil society.

IV. Constitutional problems or lack of a culture of democracy

29. From the outset, the expert wishes to state his conviction that Haiti suffers from an enormous lack of a culture of democracy, which must be reduced if democracy is truly to be strengthened and political stability ensured in this country, which seems to have gone from one crisis to another since the restoration of democracy. Is this related to the "perfection" of the 1987 Constitution or rather to the behaviour of the actors in political life? Perhaps both of them together. Therefore, the opinion expressed by the trained historian, Claude Moïse, seems relevant:

> There is no perfect constitution. When in drafting a constitution one aims at perfection, in attempting to account for everything by multiplying the checks and balances and the prohibitions, there is a risk of stifling life and hindering the democratization process itself. The establishment of independent local and regional institutions, decentralization of powers and periodic popular elections certainly represent the necessary conditions for the establishment of democracy. That is one of the strengths of the 1987 Constitution. But it is not in and of itself democracy, as its liberal predecessors could not have been. In order for it to live and function, it must be recognized and accepted by the social and political actors, and their respective organizations must work to make it dynamic and respected ... The Haitian people have always been deprived of power, and have often shown that they rejected traditional power. They must still prove that they want to take hold of the powers within their grasp in order to establish a State based on the rule of law, a regime of liberty and justice. (in *Constitutions et Luttes de pouvoir en Haiti, 1990 Editions CIDIHCA.*)

30. Five years later, in her *Plaisloyer pour une nouvelle constitution* (The Case for a New Constitution) published by the Centre humanisme démocratique en action, Professor Mirlande H. Manigat addressed the question by taking another path:

> Bowing to the ease but also the logic of hindsight, it is clear that in 1987 it would have been preferable to use one of our former Constitutions for the time being, which, by the way, had been suggested, shorten the term of the National Governing Council, hold elections for new leaders and give the Chambers, freed from the twin constraints of haste and impatience, the responsibility for drafting a constitution. This was not done because the nation as a whole had succumbed to a classic temptation which it could not resist, namely, to reject the burdens of a past which is blamed for all our ills, with as a corollary, the irresistible attraction of novelty and

> imagination, both of which bring with them the will to change and change itself. The mass approval of the Constitution was more an exercise in collective self-satisfaction than an act of legal evaluation, for, all in all, outside the confines of the Constituent Assembly, there was no true open discussion on its essential provisions, and a consensus suffused with joyful lightheartedness quickly formed that the Constitution was good simply because it was new.

31. She is quite right in stating that an excessive desire for innovation posed the risk of suffocating society rather than curing it. Should the Constitution be blamed? Should we believe that Haiti is incapable of holding elections without disputes and rejection of the results from the ballot box? Are political leaders capable of political tolerance? These are questions being asked by observers of Haitian political life. There had been so much hope that Haiti would finally emerge from its crises in the aftermath of the elections of 21 May 2000. This hope on the part of the expert, friends of Haiti, and above all the Haitian men and women who had joined forces over the past few months appears far from being realized. Rather than resolving the political situation, it seems that the election of 21 May 2000 has complicated it. The expert cannot but regret the prevailing atmosphere in Haiti, which is hardly conducive to ensuring the institutional stability essential for meeting the innumerable challenges faced by the Government and the Haitian people. There should be no need to recall that the protection of fundamental rights against abuses by the executive power is one of the essential aspects of the rule of law. This protection will rest mainly on the control that will be exercised over the administration by the courts on the one hand and by the Parliament on the other. What was at stake in the elections of 21 May can easily be understood from the viewpoint of the presidential election planned for November or December.

32. Today, it appears that there is a considerable distance between laws and reality. Haiti played an important role in the drafting and adoption of the Universal Declaration of Human Rights in 1948. The Declaration is part of the preamble to the 1987 Constitution with the same status as the Act of Independence, making human rights the central idea which inspires the rest of the Constitution. It contains a complete set of a good thirty articles devoted to human rights, economic, social and cultural as well as civil and political. Of course, the 1987 Constitution is not innovative, for since 1843 Haiti has affirmed these rights of its citizens: liberty, security, principles concerning habeas corpus, procedures governing arrest, and so forth. All the Constitutions which followed have reaffirmed them.

33. Nevertheless, the tumultuous political history of Haiti has always been marked by unrest, assassination, arbitrary arrest, and cruel, inhuman or degrading treatment. It should be pointed out that even the Duvalierist Constitutions recognized and guaranteed human rights. What was original about the 1987 Constitution was that it was the first to raise great hope among all levels of society, or to quote Mirlande Manigat, "it was the moment where hope cauterized past wounds and minimized the risks ...". That said, when one takes stock of the situation it can be said that some clear improvements have resulted, nevertheless.

34. As an illustration, we have only to refer to respect for freedom of expression. There has been a liberation of the word, as one would say: people speak out on television and radio. A practice arose which is commonly called "open channels", where, under cover of anonymity, Haitians could say whatever they wanted on any subject. Newspapers were established. There was a period of euphoria and even a tendency to confuse liberty with licence. Today, out of the six "open channel" programmes, only two remain. Certainly, freedom of expression exists, but self-censorship seems to be developing.

35. Some journalists seem to be afraid to express themselves freely because of threats from unknown persons. The murder of the famous journalist Jean Dominique, even though he was close to President Préval, whose perpetrators are still at large, has heightened their fear. Serge Gilles, an opposition leader, states from New York that considerable sums (around $200 million) have been transferred to British banks. Knowing that the reserves of the Central Bank of Haiti are well below that amount, it is surprising that not only have no Haitian media reported that information, they have not even investigated the matter with the Governor of the Central Bank or the Minister of Finance.

V. The judicial system and impunity

36. The Haitian people have commemorated the sixth anniversary of the Raboteau massacre perpetrated on 22 April 1994. Six years on, the families and friends of the victims of this massacre can at last see appearing on the horizon the commencement of the Raboteau trial, which is scheduled for 12 September 2000. Six years of bitter struggle to tell the whole world that the Haitian people will never again accept the reign of impunity. The expert has followed all the twists and turns of this case and commends the diligence with which the judicial authorities have handled it since it left the Investigation Chamber. The accused have exercised their right of appeal before the Court of Appeal and the Supreme Court.

37. Before his departure from Port-au-Prince, the expert was informed of the submission of a new appeal by one of the accused, who is contesting the competence of the court to which he has been sent for trial. It is to be hoped that this appeal will not again call into question the date of the trial, but it is important that the appeal should be considered, not only swiftly, but also in compliance with the standards required for a just and fair trial. There have been other massacres too, including the Jean-Rabel massacre of 23 July 1987, which cost the lives of more than 200 peasants; the Piatre massacre of 12 March 1990, in which 11 persons died and 300 houses and cabins were burned down; and the Gervais massacre, in which 1,000 homes were destroyed.

38. Currently, the Haitian Government is endeavouring to shed light on these events, as demonstrated by the establishment on 23 July 1999 by the Minister of Justice of a judicial commission charged with supervising the investigations into these massacres. In the case of the Piatre massacre, 400 persons have already given evidence, which is remarkable, given that the large landowners in the Artibonite department have an iron grip on the government commissioners and other investigating magistrates. There is a need to ensure that the commission's work is brought to completion. There is a police laboratory capable of performing ballistic analysis, which is enhancing the quality of the investigations.

39. The Piatre case is of capital importance in that it is the tragic outcome of a dispute concerning 100 *carreaux* of land occupied by Olivier Nadal (President of the Chamber of Commerce and Industry in Haiti), who already "owned" a 900-*carreaux* estate in the same area. The peasants of the village of Piatre sued Mr. Nadal unsuccessfully in the court in St-Marc. Thus it was that when the fall of the de facto president Prosper Avril was announced, on 11 March 1990, they returned to this land. The section chief and his deputy organized a crackdown against them, resulting in the death of a peasant by the name of Samuel Saintfacile. In retaliation at the failure of the judicial authorities and the police to act, the people lynched the section chief and his deputy. The following day, on 12 March 1990, a detachment of 30 soldiers backed by armed civilians from St-Marc perpetrated the Piatre massacre. (See *Haiti-Progrès*, vol. 17, No. 52.)

40. The expert shares the view of the Fondation Jean-Marie Vincent that, until the poor peasants strengthen their organizations they will never obtain justice. He therefore recommends the establishment of legal services in rural areas in order to better assist the peasants in organizing by availing themselves of the law. As to the trial in the so-called "Carrefour Feuilles" case, involving the summary execution of 11 persons, it is scheduled to begin some time in August 2000. Of the dozen or so police officers arrested, five have been released. In fact, after a confrontation with the witnesses and the other accused parties, it was established that they had not even been at the scene of the incident.

VI. Judicial reform: speeding up the process

41. Laudable though these efforts are, they could be wrecked by the sorry state of the judicial system. In his previous reports, the expert has always emphasized the pressing need to provide the Judges School with a statute and to establish a Superior Council of the Judiciary. During his most recent visit, he commended the efforts of the Minister of Justice, who had just transmitted to the Prime Minister several bills that are to be the subject of a debate with civil society in September 2000 with a view to achieving a broad consensus. The expert considers that this dialogue with civil society actors may help to prevent the Parliament from distorting the philosophy underlying the texts, which are to be presented to it for consideration and adoption.

42. These texts concern, inter alia, the Superior Council of the Judiciary, which will in future be responsible for supervising judges and for their career development, with a monitoring system that will enable it to track judges' development and recommend promotions or disciplinary measures. The establishment of the Council will allow the Ministry of Justice to play a more decisive role in the development of standards, becoming a kind of Ministry of Law.

43. The statute of the Judges School should make it possible to create a corps of apolitical and independent judges — this, at least, is the philosophy underlying the project. In fact, the aim is to arrive, within the next 10 years, at the point where all judges are graduates of the School, having been admitted to it solely through a competitive examination. To date, the Haitians nominated by the Assemblies to serve as justices of the peace have been close to the authorities politically. One of the safeguards provided for in the project is that in future the Assemblies will no longer be able to nominate candidates for the posts of justices of the peace unless they have graduated from the School.

44. Likewise, the establishment of the Inspectorate General of the Ministry of Justice, subject to the text's approval by Parliament, should make it possible to identify the system's weaknesses systematically and with complete independence and to take the necessary corrective action. The Inspectorate General will be able to recommend any measure that is both appropriate and conforms to the fundamental principles relating to the independence of the judiciary.

45. The draft code of criminal procedure has not been finalized and is to be the subject of a dialogue with civil society, including the lawyers' association and non-governmental human rights organizations. Such interaction will undoubtedly encourage civil society actors to take over this project in order to better defend it after contributing their expertise and experience. A text on ethics and another on money-laundering are being finalized, as well as a large number of bills and decrees on the ratification of several treaties, including international human rights instruments.

VII. The documents of the military and paramilitary forces

46. The refusal of the United States authorities to return all the materials and the approximately 160,000 pages (this figure is disputed by the Americans) of documents of the Haitian Armed Forces and the Front révolutionnaire pour l'avancement et le progrès en Haïti (FRAPH) confiscated from the offices of the military and paramilitary forces continues to mobilize Haitian non-governmental human rights organizations with the support of foreign organizations such as Human Rights Watch and Amnesty International. United States Secretary of State Madeleine Albright stated on 4 April 1998:

> All the documents have been returned to Haiti and offered to the Haitian Government. The Haitian authorities have been invited to examine the documents in their entirety and to take them from the American embassy to be guarded by the Haitian Government. So I think that the United States has been very cooperative in this matter.

47. The view expressed by the Democrat John Conyers, Jr., chairman of a bi-partisan congressional delegation that visited Haiti from 10 to 12 September 1999, echoes the expert's words in the General Assembly in November 1998. The honourable member of Congress said:

> A study undertaken by the American Law Division of the Congressional Research Service concluded that the documents are the property of the Haitian Government and that their seizure clearly violated the spirit, if not the letter, of the mandate of the Multinational Force. The claims of the Department of Defence and other branches of the United States Government that the documents should be amended in order to comply with the Privacy Act are simply without foundation. The documents must be returned intact.

48. As the expert stated in the Commission on Human Rights on 19 April 2000, he is not motivated by any hostility towards the United States Administration. It is simply that he has too much respect for United States efforts in the field of human rights to remain silent on a case that runs counter to his beliefs as a human rights defender. This is the only reason for his persistence over the years in raising this matter in the General Assembly, particularly on account of its central importance in the fight against impunity. Some have implied that the United States may be concerned that the documents contain information regarding the possible involvement of United States citizens in

human rights violations. Allow the expert to urge you, for the last time, to realize what is at stake in this regard for many victims of the coup d'état and to invite the United States to settle this matter once and for all by returning the documentation in its entirety.

VIII. Dysfunction of the criminal justice system

49. The weakness of the Haitian judicial system, which is manifested in the dysfunction of the criminal justice system, the lack of independence of judges and government commissioners and the difficulty of gaining access to the courts, continues to arouse frustration, not only among the people, but also among donors. By way of a reminder, the expert had expressed concern at the failure of the government commissioners to implement orders for the provisional release of detainees issued by judges, particularly in sensitive cases, not to say those with a political connotation. This attitude, which is detrimental to the rule of law, has resulted in a burgeoning number of cases of arbitrary detention.

50. There are in addition the cases of illegal detention for debt or witchcraft, failure to respect judicial procedures because of ignorance or corruption on the part of judges, and denial of justice. It is therefore not surprising that the prison population numbers 4,000, compared with 1,500 five years ago. The National Penitentiary in Port-au-Prince alone houses more than 50 per cent of the prison population. To be more specific, as of 2 August 2000 there were 2,178 detainees in the National Penitentiary, of whom only 220 had been convicted; the remainder, that is 1,958 persons, were being held in pre-trial detention. The cases of most of those being held in pre-trial detention are affected by serious judicial irregularities.

51. It must be also pointed out that the efforts made to improve detention conditions have been gravely undermined by the substantial reduction in the support that the international community had provided until now to this nerve centre of the criminal justice system. The dysfunction of the judicial system also led to the death in detention on 9 February 2000 of Claude Raymond, a former general in the Haitian Armed Forces, who had been detained since 1996, although several orders had been issued for his release. While his death was the result of a serious illness, the expert cannot but deplore that this happened, whereas he should have died a free man.

52. It must be recalled that, on 22 July 1999, the Deputy Executive Director of MICIVIH had discussed with the Minister of Justice the case of Claude Raymond and those of some 20 other people, all of whom were being detained in Port-au-Prince despite the fact that orders had been issued for their release. Nine of them had spent more than three years in pre-trial detention. In order to remedy this situation, the Minister of Justice had taken measures, including disciplinary action against certain government commissioners. It is in this context that the government commissioner for Port-au-Prince had been replaced, on a temporary basis, by his deputy, Florence Matthieu. In December 1999, she decided to release those held in detention for prolonged periods. She apparently justified this step on "humanitarian grounds".

53. It must be added that these detainees, most of them former members of the Haitian Armed Forces, were accused of breaches of State security and that, apparently, no judicial proceedings against them had been initiated. Following her decision, Ms. Matthieu was relieved of her duties. Allegations of corruption were reportedly made, but some maintain that her dismissal was in fact a punishment for her bold decision. Whatever the case, this situation again puts the spotlight on the view expressed by the National Commission of Truth and Justice in 1995, a view shared by the independent expert, that:

> The role of the commissioner must be reviewed in the light of one of the first objectives of the Commission, namely, the elimination of all political interference in the exercise of judicial power ... depending on the personality of the commissioner, he or she may actively intervene in almost all areas. Given the commissioner's status as an agent of the executive, this may lead to interference by the executive branch, or at least give the impression of such interference.

54. The new government commissioner, Wilfried Présent, a member of the first class to graduate from the Judges School (1997-1998), is trying as best as he can to follow the advice of MICIVIH and is striving to ensure respect for international standards. On the eve of his meeting with the expert, he visited the detention centres in Port-au-Prince, in accordance with article 447 of the Code of Criminal Investigation. He was thus

able to identify a significant number of irregularities, which he immediately brought to the attention of the Minister of Justice by a letter dated 1 August 2000.

55. It is clear from his visits that people are being detained for years without appearing before the judicial authority that is supposed to rule on their case; that detainees are continuing to languish in jail notwithstanding judicial decisions such as dismissal orders; and that people are being incarcerated without there being a file on their case, either in the Prosecutor's Office or in the Investigation Chamber. Not without having pointed out the relevant provisions on individual liberty (1987 Constitution, Code of Criminal Investigation, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, American Convention on Human Rights), the government commissioner is intending to take the necessary corrective action in respect of these irregularities and to do so before the reopening of the courts for the next session, provided that the Minister of Justice has no objection. The expert can only encourage such an initiative and is therefore recommending that MICAH should provide every assistance in order to put an end to situations of illegality and arbitrariness. It is regrettable that the Port-au-Prince Prosecutor's Office, which is overwhelmed with cases, is not equipped with computers and photocopiers, not to mention an electricity generator or a service vehicle.

56. Accordingly the expert urged the Government to see that the government commissioner in Port-au-Prince enjoyed the best possible working conditions. It was also imperative to take firm measures against the insubordination of some policemen who tended to forget that the police constitutes the right hand of Justice. Normally, the commissioner should be kept informed of those being kept in custody. Unfortunately, in real life, people are kept in police stations for months without a hearing before a judge.

57. As soon as he learns about such a case, the government commissioner demands that the person concerned be released and immediately brought before a judge. It sometimes happens that an order is issued and the police negotiate with the person with a view to rescinding the order. Sometimes, the police will arrest someone for kidnapping who is later released because his dossier was inadmissible since the police had not taken the pains to notify a justice of the peace to verify the facts of the case. The list of omissions is long; it includes the lack of forensic medical services; to this day, there is only one forensic physician for the whole of Haiti.

58. Corruption in the judiciary, which the expert noted in his previous reports, continues to be rampant and to block efforts to persuade the Haitian people to become reconciled to the justice system. The phenomenon is thriving as the drug traffic becomes more widespread with the involvement of a number of policemen. It is not surprising that one wing of the National Penitentiary has been christened "the Colombians' quarter" because of the number of inmates being held for drug trafficking. It was reported to the expert that even the farmers were engaged in this criminal activity by collecting the packages containing drugs dropped by planes arriving from Colombia.

59. For the farmers, who are living in extreme poverty, this is a windfall. In 1999, the expert had stressed the danger to the stability of Haiti caused by drug traffickers and the need to support the international community in fighting this scourge. Since then, certain initiatives were taken, including the anti-drug traffic campaign launched by the Haitian National Police with the help of the American Drug Enforcement Agency. However, the recent American decision to suspend aid to the National Police raised fears that the situation would get worse.

60. In recognition of the dominant role of the judicial system in strengthening human rights, it is urgent to take steps to implement the plan of action relating to the legal system. The non-existence of an operational parliament is a major handicap in executing that plan. Still, it is to be hoped that the disputed election will be settled in the interest of the Haitian people and adherence to the law, thus creating a situation favouring discussion and adoption of the projects that would immediately be forthcoming from the executive branch.

61. With regard to legal aid, the Minister of Justice has issued a circular advertising that justice is free. While it was a praiseworthy initiative, the expert thought it should go much farther. Accordingly, he discussed with some of the actors his approach to legal services in rural areas based on using the law as an instrument for economic and social development targeted especially to the most disadvantaged groups and those living in rural areas.

IX. Rural populations and the right to development

62. As applied to the rural population of Haiti, the phrase "legal poverty" is a truism. It is a poverty that reflects the socio-economic conditions prevailing in Haiti, a country which is continuing to suffer from all the evils of underdevelopment. It is true that many of the so-called development strategies initiated in Haiti were based on repression, denial of civil and political rights as well as economic and social rights. That being so, the rural population, in particular the women, have been the most deprived and the right to development, as a human right, is of concern above all to them.

63. But what is the use merely of proclaiming a right unless serious efforts are made to create conditions that will make it possible to exercise that right? Thus, the expert, starting from his conviction that access to equal justice for rich and poor is essential to establish the rule of law, considered it indispensable to provide adequate legal assistance to those who, under threat to their lives, liberty, poverty or reputation, are unable to pay a lawyer.

64. But over and above traditional legal aid, which is generally limited to criminal matters, the expert emphasized the need to help rural people to use common law as an instrument to improve their rights situation. While it is true that the law has been and can be misused or abused for purposes of institutionalizing poverty and privilege, exploitation and inequality, it can also be used properly to establish social justice and equality, participation and autonomy.

65. However, for that to happen, the law should be the expression of the will of the people: the enshrinement of their right to participation in public affairs. Article 21 of the Universal Declaration proclaims the right of everyone to take part in the government of his country, directly or through freely chosen representatives. That universal principle is reaffirmed in article 25 of the International Covenant on Civil and Political Rights. It should also be remembered that the right to development encompasses the principle of autonomy, equal opportunity, participation in development, access to resources, Governments and institutions and finally, assumption of responsibility.

66. The principle of autonomy, when applied to individuals and groups implies their right to organize individually and collectively to promote their development and to pursue that goal so far as possible by their own means and through their own efforts.

67. Participation in development implies that individuals and communities which are the beneficiaries of development, can organize thanks to their guaranteed right of association in their capacity as producers, workers, consumers and as deprived citizens or communities on the local, national and international levels and that through those associations, they can:

(a) Participate effectively in the decision-making process by formulating and applying local and national development policies and, at the same time, be sure that their needs and aspirations are taken fully into account;

(b) Formulate and undertake economic, social, political and cultural tasks of their choice, and as a result of those policies, improve their quality of life and preserve and develop their own cultures.

68. Consequently, a Haitian strategy devised with respect for human rights and in particular the right to development will be oriented towards autonomous development likely to lead to participation. Still, we must not overlook the fact that concern for justice and respect for human rights works more to the advantage of development focused on rural populations. Have they any chance of knowing their rights? To understand them clearly enough to claim them? Regardless of how much they know about their rights, they often have neither the means nor the resources required to exercise them.

69. To reverse that trend, the concept of the right to development can and should constitute a basis for the adoption of laws and procedures designed to eliminate the conditions of underdevelopment or at least help to overcome the obstacles to development.

70. Two questions arise concerning Haiti: first, how to bridge the enormous gap separating the elite, the middle class, from the vast majority and second, how to help that majority to gain access to the legal resources they need in order to enjoy their rights. Those questions can be answered by the threefold motto: "development, rule of law and legal resources".

71. In the matter of development, the basic requirement is the assistance to be given to the rural masses to enable them to determine their own priorities, identify the obstacles and secure the means

of achieving those goals. In other words, development presupposes that those rural people will take their future into their own hands an that being so, the contribution of the law and lawyers is not only desirable, but indispensable.

72. On the question of the law, Haiti has apparently replicated Western law in the various branches of government. Moreover, this extraverted law is often used to maintain the status quo so that it often proves not to reflect the current society or translate its aspirations. The law is not static; it changes with the society and can facilitate change and progress. From that point of view, the law may be a resource for poor Haitian farmers who need to change their living conditions and for development in general.

73. Legal resources, to quote Clarence Dias, constitute the functional knowledge and competence enabling those working together and in tandem with other groups, to understand the legislative system and to use it effectively to promote their objectives. They generate and strengthen the motivations and incentives for collective action to promote and defend common interests.

74. Convinced of that truth, the expert drew the attention of the members of the legal profession, politicians and leaders of the civil society to the absolute need to collaborate with sociologists, economists, non-governmental development organizations, peoples' organizations and all men of goodwill to find the means of bringing the law down to the level of the rural population, thus enabling them to organize around the law and to enjoy the legal services available to more affluent groups.

75. Through a training programme for para-legals or "barefoot lawyers", the rural population of Haiti can be informed of its rights, shown how to claim them and how to secure them; advised on how to deal with obstruction and difficulties; even on occasion initiate procedures in cases of special importance to their communities; and do their own analyses of their problems in order to promote the necessary legislative reforms.

76. We must not lose sight of the fact that the drafting of legislation is strengthened and clarified by continuous confrontation with social reality. Here, we are tempted to quote Michel Foucault in *Les Mots et les Choses* (The Order of Things):

> What we put on things, the internal law, the secret netting which allows them to look at one another, but only through the grate of a look, a glance, a language, and it is only in the white spaces of this pattern of tiny squares that order is there in its full dimension, awaiting in silence the moment when it will be put into words.

77. In the past, a great many laws and regulations directly affecting the rural world were enacted without the participation of the people concerned. The result is that the rural inhabitants are unaware of those laws or are only partially and imperfectly acquainted with them. To stress the importance of knowing the law as a vital element in the process leading to collective self-sufficiency, the independent expert referred to Anisur Rahman, who did research for the International Labour Organization on peoples' organizations in various third world environments using techniques based on participation. To illustrate, he describes the impact of knowing the law on landless peasants in Asia:

> As the peasants progressed in analysing their social environment, they gained a deeper understanding of their rights and therefore became aware that they were deprived of them. That awakening led them to take the steps which had the effect first of all of transforming their state of alienation born of ignorance into consciousness that they possessed the power (the right) by virtue of the law and then, into an act exercising that power. The law and the legal knowledge that they acquired were strategic components of consciousness-raising and of mobilizing people. They now had concrete problems on which to focus collective participatory action.

78. There is not the slightest doubt that legal services will have a definite impact on the economic and social development of the rural populations of Haiti. They will now be able to use the legal provisions of benefit to them to neutralize unjust laws and practices; in fact, they will become producers of rights and actors in the life of civil society. The time was no longer distant when knowledge of his rights would enable *homo haitiensis* to substitute for his feelings of alienation, resignation and dependence a new consciousness of his dignity and his rights — a prerequisite for self-sufficiency.

X. Towards a new generation of magistrates

79. The dilapidated state of the judicial system does much to fuel the feeling of impunity that pervades the country. Especially deplorable is the lack of proper training for judges owing to the poor quality of the law schools in the provinces and the insufficient number of teachers. It is therefore encouraging to note that the Minister of Justice plans to train 40 magistrates a year, the aim being to have nothing but graduates of the Judges School from the Peace Tribunal to the Court of Appeals in the next 10 years. For the Supreme Court, the wait will have to be at least 20 years. It should be borne in mind that the Judges School, which is currently much in fashion, is a decisive factor in the resuscitation of justice in Haiti. The Minister of Justice has also decided that the officials of the Attorney-General's office and the justices of the peace have to take the competitive entrance examination for admission to the School. It amounts to a test of ability. There actually appears to be a real desire to remedy the inadequacies, both qualitative and quantitative of the justices of the peace. It is our fervent hope that the Minister will win his wager and that in 2010, most of the magistrates will be cast in the same mould.

80. We must also acknowledge the work accomplished by a commission of inquiry established by the Minister whose report served as basis for the dismissal of magistrates implicated in acts of corruption and embezzlement in the judicial administration. Efforts were made to raise the salary level. For example, a Court of Appeals judge who was earning 6,000 gourdes ($300) now earns 20,000 gourdes or $1,000; salaries at the Supreme Court rose from 27,000 gourdes ($1,350) to 60,000 gourdes or $3,000. Nevertheless there are still cases of corruption like the one described to the expert by the Minister of Justice. At Marigo, in the south-east of the country, a judge demanded that an individual pay him from the sale of 2 kilos of cocaine. When questioned, he admitted the deed and was forthwith dismissed and prosecuted.

81. Another judge received the sum of $3,000 from a defendant for nullifying a decision he had already handed down. He was immediately dismissed and his dossier was sent to the Superior Council of the Judiciary with the intent of bringing him up on charges at a later date. The expert wishes to point out that peace, democracy and development have a price which includes building an independent judicial system accessible to everyone. In that connection, I cannot but deplore once again the delays in implementing the judicial reform process.

XI. Administration of justice

82. On 28 May 1999, the Chamber of Commerce and Industry organized demonstrations in Port-au-Prince to protest against the prevailing insecurity, political violence and anarchy. The demonstrators were subjected to violent attacks by pro-Aristide counter demonstrators. Immediately after the demonstrations, the police carried out an operation in the Carrefour-Feuilles district of the capital, in the course of which 11 persons were killed. A number of policemen were arrested in the wake of these events. The police subsequently reported that the 11 victims were members of armed gangs.

83. It is encouraging to note that the work of the commission (comprised of three judges) appointed by the Minister of Justice to investigate this incident resulted in the identification of the policemen who had carried out these summary executions. According to a report published on 21 March 2000 by Amnesty International, entitled *Haiti: justice and liberties at risk*, the majority of the policemen arrested had already been implicated in murders and, following their arrest, the number of extrajudicial killings carried out by the police had declined. It should be noted that the Office of the Inspector-General of the Haitian National Police (IGPNH) also submitted its report on the Carrefour-Feuilles incident, the conclusions of which have not yet been made public.

84. The IGPNH deserves to be commended for its work. Since the establishment of the Haitian National Police, 635 policemen have been dismissed, 407 of them following investigations carried out by the Office of the Inspector-General and the others by decision of the Office of the Director-General of Police. Still remaining, however, is the question of the judicial proceedings that should be instituted against those policemen accused of human rights violations. According to the quarterly report of MICIVIH, for the period from October to December 1999, of the total number of policemen dismissed, at least 130 of them were dismissed for human rights violations. In 1999 alone, MICIVIH recorded 66 homicides (by accident,

in self-defence or in violation of human rights) involving policemen.

85. The question is whether the remarkable work being done by the ICPNH will suffer from the departure of the Inspector-General, who has resigned his office and now serves in the Permanent Mission of Haiti to the United Nations Office at Geneva. That is very likely since, up to when the expert left Port-au-Prince, his successor had still not been named. Many rumours were circulating about possible changes in the hierarchy of the Haitian National Police. Despite the latter's shortcomings, results have been achieved, even though these have been modest, in view of the prevailing insecurity, particularly in Port-au-Prince. During the week spent in Port-au-Prince alone, the expert noted that there were several cases of murder, fatal blows, injuries, burglaries and other forms of attack against persons and property.

86. This grim picture is compounded by the presence in the National Penitentiary and in the Pétion-Ville prison of a growing number of "deportees", 124 of whom are being held in the National Penitentiary alone. The "deportees" are Haitians who have been tried and convicted in the United States for, inter alia, serious crimes, drug trafficking, hold-ups and rape, and who have completed their sentence. It is no easy matter to achieve the social reintegration of these Haitians, for some of whom this is the first time that they have touched the soil of Haiti.

87. The independent expert is of the view that their detention is illegal and arbitrary and noted that most of the persons with whom he spoke about the matter (including non-governmental organizations that defend human rights, political parties, jurists and ordinary citizens) defended the legitimacy of such a measure, even though it is illegal. In other words, everyone attached greater importance to the aspect of public security. Even though the expert shares the public's concern, the trend is not a very healthy one. The United States and Haiti should together examine this issue very carefully with a view to finding a formula that can preserve respect for the primacy of the law and the security of persons and property.

XII. Establishment of the International Civilian Support Mission in Haiti (MICAH)

88. As you are aware, the United Nations Civilian Police Mission in Haiti (MIPONUH) ended on 15 March 2000. The Mission consisted of a contingent of 140 armed international policemen who were deployed in nine provinces in Haiti. Without a shadow of doubt, their presence has had a real impact on the human rights situation. Not only did they visit detention centres, but they also helped to reinforce the effort to professionalize the recently formed Haitian police force and to reassure the population. The Mission was replaced by the International Civilian Support Mission in Haiti, the focus of whose mandate is to provide support for the reform of the justice system, professionalize the police and promote respect for human rights in Haiti. Unlike their predecessors of MIPONUH, the 150 members of MICAH will be unarmed.

89. MICAH has a budget of $24 million with the United Nations providing $9.2 million of the total and the remainder to be funded from voluntary contributions, mainly from the United States and Canada. Like the Secretary-General of the United Nations, the expert fears that MICAH could be withdrawn even before it really begins its task. The Secretary-General also drew the attention of Member States to this matter in a letter dated 31 March 2000 addressed to the President of the General Assembly. He was of the view that without qualified personnel, the mandate which the General Assembly had entrusted to MICAH could not be implemented. In his letter, the Secretary-General also stated that, rather than maintaining a presence in Haiti with only administrative personnel, given the lack of financial resources, if the Assembly so wished, it could terminate the Mission and transfer its substantive activities to the United Nations Development Programme (UNDP).

90. Fortunately, contributions have been paid and MICAH has already begun its work, even though the Mission does not yet have all the personnel that it needs. It is encouraging to note that, the Representative of the Secretary-General in Haiti, Alfredo Lopes Cabral, is held in high esteem both in political circles and by civil society. This can only strengthen the authority of MICAH and facilitate the implementation

of its mandate. Mention will be made here only of the Human Rights Section, which should have a total of 31 advisers working in two fields, namely capacity-building and human rights monitoring. Efforts are being made to strengthen capacity in three sectors: State institutions (police, prisons, judicial system, and the Office of the Ombudsman), non-governmental organizations and civil society in general.

91. The expert wishes to highlight the extremely valuable contribution of MICIVIH, the Mission's predecessor, whose mandate was not renewed. In July 1999, MICIVIH was forced to release nearly half of its personnel on account of its financial difficulties. Now that MICAH is in place, the Office of the United Nations High Commissioner for Human Rights should immediately establish close ties of cooperation with the Mission. The independent expert is convinced that the aim should be to ensure a permanent presence of the Office of the High Commissioner in order to prevent a vacuum when MICAH ceases its activities. The expert had hoped that such an approach would be followed even before the departure of MICIVIH. Those hopes were not realized, however, even though there was some activity in the form of the organization of a human rights training programme for the benefit of non-governmental organizations.

92. The expert recommends that MICAH should go beyond the monitoring of human rights and place greater emphasis on capacity-building. Since one of the objectives of the Human Rights Section is to promote respect for democratic values, the expert recommends that a symposium should be held on the culture of democracy in which the principal leaders of political parties and leaders of civil society would participate. The Office of the High Commissioner could also continue the support provided to the Office of the Ombudsman and to non-governmental organizations active in the defence of human rights. In addition, the Office could assist the Haitian Government with the process of ratification of the principal human rights instruments, in particular the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Economic, Social and Cultural Rights and the two Optional Protocols to the International Covenant on Civil and Political Rights.

XIII. Right to education

93. Access to education remains one of the major problems that Haiti faces, hence the launching in September 1999 by President Préval of a universal education programme to make up for the shortcomings in the implementation of the commitments given at the World Conference on Education for All: Meeting Basic Learning Needs, which was held at Jomtien (Thailand) in March 1990. As Georges G. Merisier, a member of the management committee of the National Education and Training Plan (PNEF) recalled, the aim was to achieve the following objectives by the year 2000: more childhood protection and development activities; universal primary education; improved apprenticeship results; greater access to basic education; and greater access by individuals and families to all educational avenues that can equip them with the knowledge, skills and values needed to improve their quality of life.

94. Despite the measures taken by the Haitian Government over the past decade, more than 500,000 children aged 6 to 11 years, or 33 per cent of children in this age group lack access to education. The average national net school enrolment rate is 67 per cent. However, according to the progress report on the implementation of the National Plan, this rate is 85 per cent in the department of the North-East and 51 per cent in the department of the Centre. These are huge disparities of which both the Prime Minister and the Minister of Education are fully aware and are attempting to address with the resources at their disposal.

95. It is also acknowledged that the level of training of teachers is rather low. The result is a high drop-out rate, with many pupils abandoning school before their sixth year of school, not to mention those students who repeat two and sometimes three years. As a result, in the sixth year of school, the number of students remaining represents less than 12 per cent of those who started out in the first year. This has led the managers of the PNEF to declare:

> This situation is depleting the country's future human resources and causing the State and parents of students to lose a great deal of money. Unless major changes are made to the system in order to increase its efficiency, the State and parents will end up paying four times the amount that it costs to produce one primary school graduate.

96. The measures that have been taken to improve the quality of teaching include retraining programmes for over-age pupils in the formal school system. With a view to its implementation, a pilot project is currently being executed with the assistance of the United Nations Children's Fund (UNICEF) for an alternative programme targeted to over-age pupils. Another project seeks to mobilize human resources for the development of education in Haiti and is supported by the International Organization of la Francophonie and the United Nations Educational, Scientific and Cultural Organization (UNESCO). The expert had an opportunity to discuss with the Prime Minister the type of relationship which the university should maintain with the society and the mediocre quality of teaching in law schools.

97. The Prime Minister described the universal education pilot programme currently under way in the department of the Centre, where the highest number of children to be schooled (50,000 children aged from 6 to 12 years) is located. The first phase began in January 2000, as a result of which 17,000 children, whose parents had not envisaged sending them to school on account of their poverty, were able to attend school. This was made possible through the combined efforts of the national education authorities supported by churches, non-governmental organizations, mayors' offices and heads of private schools, some of whom made available one or several classrooms, while others provided text books, notebooks and other supplies. The programme was supervised by a commission, whose members included representatives of the Ministry of Education and of civil society.

98. It is reassuring to note that this operation did not take into account the political affiliation of the families concerned. It should be noted in passing that the vice-chairman of this commission is a human rights defender who is also known for his opposition to the powers that be. For its part, the State took charge of the targeted teacher training, the provision of school uniforms to children and the school cafeterias. It is expected that the remaining 33,000 children will be enrolled in school by October 2000. There is no doubt that in this sector, the partnership between the Government, political organizations and civil society actors can only be beneficial for the realization of the right to education. This right is not limited solely to access to education; it is more than a battle against illiteracy. For this reason, while welcoming the efforts of the Haitian authorities, the expert nonetheless draws attention to the medium-term dangers of functional illiteracy. This danger is real and stems from various factors, including: the proliferation of private schools (nearly 80 per cent of teaching is in private hands); the declining quality of teaching; the phenomenon of what are called "borlette" schools (named after a game of chance) — anyone, regardless of qualifications, can open a school; lax monitoring by the State up to now; and, lastly, schools being perceived as commercial enterprises. These factors raise fears that the scourge of functional illiteracy will replace that of illiteracy.

99. While it is a commonplace to say that young people are a country's future, there is a risk that future generations will be handicapped because they did not enjoy the right to education in the fullest sense. Education is one of the nation's priority investments in its future, for it is the only way to improve the economic and social conditions of the people. It must also be borne in mind that the strengthening of democracy depends on the level of education of the people.

XIV. Haitian migrants in the Dominican Republic

100. One cannot fail to make the link between extreme poverty in Haiti and the situation of Haitians and Haitian Dominicans living in the Dominican Republic. The independent expert was invited to take part in a symposium held at Montreal, Canada, on the topic of "The challenge of advancing the Haitian cause in the Dominican Republic". The participants in this symposium, organized by the Quebec Committee for the Recognition of the Rights of Haitian Workers in the Dominican Republic, condemned the escalating repression against Haitians and Haitian Dominicans as reported in the Dominican media, including canine-assisted manhunts in the border zone, arbitrary deportations, physical intimidation and other reprisals.

101. It is important to note that a report by the Inter-American Commission on Human Rights on the situation of Haitian migrants in the Dominican Republic stressed, in particular, the responsibility of the Dominican Republic with regard to the rights of Dominicans of Haitian descent. One need hardly recall the recommendations made to the Dominican Republic by the International Labour Organization since 1983.

These recommendations severely criticize the Government of the Dominican Republic for failing to comply with the international labour conventions.

102. The fate of Haitian migrants in the Dominican Republic is especially worrisome in that the extreme poverty that Haiti is experiencing is worsening day by day. The child mortality rate is 74 per cent; nearly 70 per cent of the Haitian workforce is unemployed; more than 75 per cent of Haitians are unable to provide for their needs. According to International Monetary Fund (IMF) figures cited in an article by Michael Dobbs in the *Washington Post* of 13 April 2000, 50 per cent of Haitian children under five suffer from malnutrition. Per capita income fell from $600 in 1980 to $369 currently. This dark picture, in other words, carries within it the seeds of violence.

XV. The murder of Jean Dominique

103. Such violence took the life of Jean-Leopold Dominique, who was murdered along with the security guard at the radio station of which he was director. We reiterated our request to the Haitian authorities to spare no effort to clear up this murder of a man who was a great Haitian patriot, a human rights defender and an activist for democracy.

104. Imprisoned by the dictatorship on several occasions, tortured and forced into exile, Jean Dominique nonetheless pursued his fight. When the Haitian people voted for their president in 1991, he stated that everything he had endured had been worthwhile. He was the one who told the *Miami Herald*:

> You must understand, for Haitians to vote is more than it is in your country. It is the way for millions of people who live in dirt and poverty to prove to themselves that they are human. It is the difference between eternal darkness and light.

105. Was his death linked to the positions that he took during the election campaign? To the positions he took against the manufacturers of contaminated concentrates and the drug traffickers? Only an independent, impartial and objective inquiry can enlighten us. This inquiry is taking its course, as shown by the appearance of Dany Toussaint before the examining magistrate. Nevertheless, the expert was outraged by the fact that the supporters of this politician accompanied him to court and conducted themselves in a manner that was tantamount to intimidating the judiciary. The expert reported this to the competent authorities, who will not fail to draw the attention of this citizen to his obligation to show due respect for the judicial authority. Jean Dominique paid with his life for the triumph of democracy. In this way, his death will not be in vain. In a text published in *Le Monde*, the philosopher Jean-Paul Sartre explains his views concerning the need for commitment here and now. These words of Sartre's acquire their fullest meaning as a tribute to Jean Dominique, who was wrested from the clasp of all fighters for human rights:

> It has been said that the messenger from Marathon died an hour before arriving in Athens. He was dead and still running; he ran, dead, and announced Greece's victory, dead. This is a fine myth; it shows that the dead still act for a short time as though they were living. A short time, a year, 10 years, 50 years perhaps, a *finite* period, in any event; and then they are buried for the second time.

106. To paraphrase the Senegalese poet Birago Diop, let us proclaim loudly: Jean Dominique is not dead, he is in the voice of all Haitians enamoured of justice and freedom; he is in the voice of all human rights defenders who proclaim their horror at human rights violations in one country or another; he is in the resolution that the General Assembly will adopt to ensure the protection of fundamental freedoms in Haiti and the return of the documents seized from the headquarters of the Haitian Armed Forces and of the Front révolutionnaire pour l'avancement et le progrès en Haïti (FRAPH), for which Jean Dominique always fought.

XVI. Conclusion

107. Haiti is going through a period of profound change which has seen the sudden emergence of the grass roots into politics. While it is fortunate that people are taking charge of their destiny, it is nonetheless necessary to ensure that their conduct is that of citizens. In addition, it is essential for the political leaders to make a genuine commitment to the fight to strengthen the culture of democracy, defined as a system of knowledge, feelings, symbols, beliefs and practices characterized, in particular, by absolute respect for the law, civic virtue, political dialogue, the status of the opposition, tolerance, the rejection of

violence and the guarantee of fundamental human rights. Within the schools, civic education was reintegrated as "education for citizenship". The curriculum was launched in April with a teacher training session. The basic component of the programme is the question of rights and responsibilities. Today, whatever the outcome of the electoral crisis, one gain has been made: people have become aware of the importance of having a voter registration card. They are discovering that they have the power to send their freely elected representatives to Parliament, and also to get rid of them, when the time comes, if their deepest aspirations are not taken into account. So one must not lose hope for Haiti. The valiant Haitian people, who fought hard to win the right to freedom, who then experienced the United States occupation, the reign of the Tontons Macoutes, and other forms of authoritarian government too numerous to mention, now aspires only to live in dignity. On 1 January 2004, the entire Haitian people, together with all the black peoples and all those enamoured of peace, justice and freedom, will celebrate the bicentennial of the first independent black republic. This bicentennial should be the opportunity for the entire world to do justice to Toussaint L'Ouverture, to pay tribute to Haiti through this man for his contribution to the establishment of peace in the Americas and the Caribbean. One cannot fail to mention here the words of Ambassador Luis J. Lauredo, United States representative:

> My first words are to the people of Haiti. I have always been inspired by the historic struggle of the people of Haiti to achieve independence and freedom. Haiti was the first independent republic in the Latin American and Caribbean region. Haitians actively assisted the independence movements of the United States and many Latin American countries. No people in the Americas have struggled longer and paid such sacrifices in their pursuit of freedom, democracy and human dignity.

108. In citing these words of Ambassador Lauredo, the independent expert wished to testify before the General Assembly, as, for that matter, he did at the fifty-sixth session of the Commission on Human Rights, to the tireless efforts of the Group of Friends of the Secretary-General for Haiti (Argentina, Canada, Chile, France, the United States of America and Venezuela), and to express to them his gratitude for the attention and support which they have given him in the fulfilment of his mandate. He would have liked to see other countries, particularly those in Africa, despite the burden of their financial difficulties and other constraints, provide support, however symbolic, for the Haitian people's struggle for democracy and respect for human dignity.